IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.16918 of 2007

TATA TELE SERVICE LIMITED THROUGH. ITS CHAIRMAN-CUM – MANAGING DIRECTOR SRI.RATAN N.TATA,APPA SAH MALRETHAN MAL PALHAN,MUMBAI, AT PRESENT AEF BLOCK, VOLTAS T.B. KADAM MARKET, CHICHPOKLI MUMBAI-400 037. ---------- **PETITIONER**

Versus

1. THE STATE OF BIHAR
2. SRI RAKESH KUMAR SINGH, SON OF SRI KAMESHWAR SINGH, RAMJEECHAK, DIGHA, PATNA ----- **OPP.PARTIES**

For the petitioner : M/S Rana Pratap Singh, Sr.Advocate
Sumant Singh, Advocate
For the State : Mr.Jharkhandi Upadhaya, A.P.P.
For Opp.Party no.2 : None.

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6 17-12-2008 Tata- Tele Service Limited (hereinafter referred to as "the Company")along with its officials was made to figure as accused in Complaint Case No.3500 (C) of 2006 and following an enquiry under Section 202 Cr.P.C. cognizance was taken under Sections 406,420,120B I.P.C. against all the accused including the petitioner Company. The petitioner Company has filed this application for quashing of the order dated 13.1.2007 passed by Sri Shobha Kant Mishra, Judicial Magistrate, Ist Class,Patna in the aforesaid case.

In short, the complainant case is that Tata-Tele Services Ltd. is a limited Company having its Registered Office at New Delhi and its Corporate Office in Mumbai and the accused persons named in the complaint are its officials.The complainant Rakesh Kumar Singh, impleaded herein as Opp.Party no.2 , runs a business in the name and style of M/S Sagi International (herein after referred to as "the Complainant") claiming himself to be the owner and proprietor of the

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said firm. It is alleged that one Rajni Kant Mani and few other officials of the Company came to the office of the complainant in January, 2005 and offered him the non-exclusive distributorship for Patna area stating that it would be very lucrative for the complainant. It is further alleged that another official of the Company, namely, Z.M. Siddiquie also met the complainant and asked him to invest Rs.7 Lacs, out of which Rs.5 Lacs would be refundable security deposit. Since the security deposit appeared exorbitant, the complainant did not accept the offer, whereupon the said accused asked the complainant to deposit Rs.1.80 Lacs as refundable security deposit and invest Rs. 4 Lacs for development of office for non-exclusive distributorship at Patna. The Complainant accepted the aforesaid offer made on behalf of the company and agreed to deposit Rs.1.80 Lacs as refundable security deposit and in fact on 7.6.2005 and 9.6.2005 by two different bank drafts deposited the said security money and in pursuance thereof letter of intent dated 22nd June, 2005 was issued by Z.M.Siddiquie for non-exclusive distributorship for Patna for a limited period of three months which was renewable.

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It is said that the complainant asked the Company and its officials to execute agreement of distributorship but he was assured that Tata is a big company and it takes care of its small business associates and, as such, he should not be worried. It is further alleged that the complainant received a letter dated 1st July, 2005 from Saminder Bedi, Senior Manager, Pay Telephone Booth Unit ("P.T.B.U." for short), giving details of acquisition and Repair and

Maintenance (“R & M” for short) commission to be paid to the complainant during the period from 1st July,2005 to 30th September,2005 . It is further alleged that he was assured that the aforesaid commission rate would be enhanced in future keeping in view the business purpose and induced thereby the complainant invested the amount with a view to improve the business and appointed different assistants and sales agents and also obtained space for running his business in Ashiana Towers . It is said that due to efforts of the complainant more than two thousand connections were installed within a period of eight months in Patna area and up to April, 2006 he was paid as per the agreed rate of commission.

The further case of the complainant is that being satisfied with his performance, the Company offered distributorship of Hajipur area to him by its letter dated 24.2.2006 and the complainant further deposited a sum of Rs.1.80 Lacs for non-exclusive distributorship for Hajipur area by demand draft dated 7.2.2006 and again invested a further amount of Rs. 4 Lacs for establishing his office . It is alleged that in course of business transaction, the accused persons asked the complainant to deposit 10 duly signed blank letterhead for the purpose of timely issuance of TDS Certificate from the Company, but it is alleged that all the TDS Certificates were issued by utilizing only one letterhead and only five blank letterheads were returned to the complainant. Hence, the complainant apprehended that the remaining blank letterheads in possession of the accused persons may be utilized against him. It is alleged that the accused persons stopped payment of

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commission from May, 2006 onwards whereas the complainant had duly submitted the claims for distributorship commission for Patna as also Hajipur area and kept sending E. Mail and reminding on telephone about non-payment of the due amount towards commission, but unfortunately there was no response and the accused persons neither paid the amount nor rejected the same. It is further alleged that a total sum of Rs.11 Lacs approximately refundable security deposit of Rs.3.60 Lacs for Patna and Hajipur area is still lying with the accused persons and inspite of several requests the payment of the aforesaid amount has not been made.

It is further alleged that on 13.9.2006 accused Rajni Kant and Anand Kumar asked the complainant to give his acceptance at reduced commission rate and he was told that the said rate had been fixed as per directions of accused Vikash Sah and Vivek Sharma. The complainant is said to have raised objections against the same as it was against their offer and understanding and asked for it in writing that the revised rate shall be effective positively and as he has already been done his business on the basis of the accepted rate, it would not be possible for him to submit his claim of commission at a reduced lower rate. Other allegations have also been amputated against the aforesaid four persons.

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The complainant has alleged that the accused had criminal intention to misappropriate and cheating money of the complainant and have committed offence of criminal misappropriation, cheating, criminal breach, forgery, criminal intimidation and corrupt activities

punishable under the law.

It appears that accused Anand Kumar and others filed Cr.Misc.No.19184 of 2007 and Vikash Sah and others filed Cr. Misc.No.20978 of 2007 for quashing of the impugned order dated 13.1.2007 and by order dated 10.9.2008, a Bench of this Court quashed the impugned order, the operative part whereof reads as follows:

> "Now coming to the merits of the case, a reading of Section 415 I.P.C. with its Explanation reveals that it is the intention which is the essence of the offence. To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise, one cannot presume that he all along had a culpable intention to break the promise from the very beginning.
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> Similarly, a reading of Section 405 I.P.C. reveals that for an offence of criminal breach of trust the necessary ingredients are (a) entrustment of property and (b) dishonest misappropriation thereof, i.e. the property has been converted to his own use.
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> It is apparent from the submission of the parties and their respective pleadings that the dispute arose regarding the rate of commission payable by the Company to the distributor. The document filed by the Complainant dated 1.7.2005 shows that "commission structure can be changed or modified upward or downwards without any prior information." Further, averment of the complainant is that till April, 2006 there had been no dispute and payment was made by the Company. So far as the entrustment of Rs.3.60 lacs is concerned, it was a security deposit which is refundable.

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Still further, paragraph 36 of the application shows that as the Complainant continued to be the distributor the security deposit was not returned. The further stand of the Company is that if the complainant does not desire to continue as distributor then the Company was ready to settle the account.

From the plain reading of the substance of the complaint and statement of witnesses no offence either under Section 406 or 420 I.P.C. appears to have been made out. Further, mere non-compliance of any of the terms of the contract cannot by itself give rise to criminal prosecution unless fraud or dishonest intention is shown to be present at the very inception of the transaction. There is nothing in the complaint to show that the petitioners had any dishonest intention to cheat or commit criminal breach of trust."

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Since the case of the petitioner company is on a better footing than the petitioners of Cr.Misc.No.19184 of 2007 and 20978 of 2007 it is entitled to similar reliefs

Accordingly, for the reasons stated above, this application is allowed and the impugned order as also the criminal prosecution as against the petitioner is hereby quashed.

(Abhijit Sinha, J)

NKS/-